

## **IC 6-3.1-6**

### **Chapter 6. Prison Investment Credits**

## **IC 6-3.1-6-1**

### **Definitions**

Sec. 1. For the purposes of this chapter:

"Agreement" means any agreement entered into with the commissioner of the department of correction under IC 11-10-7-2 that has been approved by a majority of the members of the state board of correction.

"Pass through entity" means a:

- (1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) partnership;
- (3) trust;
- (4) limited liability company; or
- (5) limited liability partnership.

"Qualified property" means any machinery, tools, equipment, building, structure, or other tangible property considered qualified property under Section 38 of the Internal Revenue Code that is used as an integral part of the operation contemplated by an agreement and that is installed, used, or operated exclusively on property managed by the department of correction.

"State income tax liability" means a taxpayer's total income tax liability incurred under IC 6-3, as computed after application of credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

"Taxpayer" means any person, corporation, limited liability company, partnership, or other entity that has state tax liability. The term includes a pass through entity.

"Wages paid" includes all earnings surrendered to the department of correction under IC 11-10-7-5.

*As added by P.L. 51-1984, SEC.1. Amended by P.L. 129-2001, SEC.5; P.L. 192-2002(ss), SEC.96.*

## **IC 6-3.1-6-2**

### **Income tax credit; amount; creditable year**

Sec. 2. (a) A taxpayer who enters into an agreement is entitled to receive an income tax credit for a taxable year equal to:

- (1) the taxpayer's state income tax liability for the taxable year;
- (2) an amount equal to the sum of:
  - (A) fifty percent (50%) of any investment in qualified property made by the taxpayer during the taxable year as part of the agreement; plus
  - (B) twenty-five percent (25%) of the wages paid to inmates during the taxable year as part of the agreement; or
- (3) one hundred thousand dollars (\$100,000);

whichever is least.

(b) A tax credit shall be allowed under this chapter only for the taxable year of the taxpayer during which:

(1) the investment in qualified property is made in accordance with Section 38 of the Internal Revenue Code; or  
(2) the wages are paid to inmates;  
as part of an agreement.  
*As added by P.L.51-1984, SEC.1.*

#### **IC 6-3.1-6-3 Repealed**

*(Repealed by P.L.192-2002(ss), SEC.191.)*

#### **IC 6-3.1-6-4**

##### **Recapture tax; amount; reports; tax liability; change in use of property**

Sec. 4. (a) A taxpayer is liable for a recapture tax if qualified property is converted to any use, other than the use contemplated in the agreement, within three (3) years after the end of the taxable year in which a tax credit was allowed for investment in that qualified property. The recapture tax equals:

- (1) seventy-five percent (75%) of the tax credit if the use is converted not later than one (1) year after the end of the taxable year in which the tax credit was allowed;
- (2) fifty percent (50%) of the tax credit if the use is converted after one (1) year and not later than two (2) years after the end of the taxable year in which the tax credit was allowed; or
- (3) twenty-five percent (25%) of the tax credit if the use is converted after two (2) years and not later than three (3) years after the end of the taxable year in which the tax credit was allowed.

(b) Any recapture tax liability must be reported by the taxpayer on his annual state income tax return for the taxable year during which the use was converted.

(c) The commissioner of the department of correction shall report any change in the use of qualified property to the department.

*As added by P.L.51-1984, SEC.1.*

#### **IC 6-3.1-6-5**

##### **Effect of agreements; considerations; verification of information related to credit**

Sec. 5. (a) Before entering into an agreement, the commissioner of the department of correction shall thoroughly consider the effect of the agreement upon the workforce in the community where the correctional institution is located and shall not enter into any agreement if it will cause increased unemployment in the community. The taxpayer shall have the burden of proving by a preponderance of the evidence that the agreement shall not increase unemployment in the community where the correctional institution is located.

(b) The commissioner shall verify any information related to the credit provided by this chapter when requested to do so by the department of state revenue.

*As added by P.L.51-1984, SEC.1. Amended by P.L.21-1995, SEC.11.*

**IC 6-3.1-6-6****Pass through entity credit**

Sec. 6. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, beneficiary, or member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or member is entitled.

The credit provided under this section is in addition to a tax credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and an individual who is a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit for the qualified expenditure.

*As added by P.L.129-2001, SEC.6.*